

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.369 OF 2005

Shendurjane (Madhali Ali)
Gram Vikas Mandal ... Petitioner

V/s.

Laxman Dagdu Jagtap & Anr. ... Respondents

Mr.V.Z. Kankaria i/b Smt.N.R. Deshpande for Petitioner
Mr.B.K. Raje for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 13, 2005**

P.C.:

. The Petitioner challenges the order passed by the appeal Court allowing the appeal and dismissing the suit filed by the plaintiffs. The Petition has been filed by the Shendurjane (Madhali Ali) Gram Vikas Mandal, which is a trust registered under the Bombay Public Trusts Act. It is submitted on behalf of the Petitioner that the appeal which was preferred by the respondents was filed against the trust, without making the plaintiffs a party to the appeal. According to the Petitioner, the plaintiffs are individuals who are members of Shendurjane (Madhali Ali) Gram Vikas Mandal. These persons are not necessarily members of the Trust and therefore, any order passed dismissing the suit

without hearing them is illegal and is required to be set aside. A second contention is raised that the respondents had not made any of the trustees a party in the appeal and had merely made the Trust a party-respondent. It is submitted that in view of the provisions of Order 31 Rule 2 of the Code of Civil Procedure, the trustees ought to have been made parties to the appeal and for that reason also the appeal was not maintainable. It is also submitted that the Trust has nothing to do with the property and it was unnecessarily joined as a respondent to the appeal.

2. The present petition itself however, has been filed in the name of the trust. None of the trustees are made parties to the petition. When confronted with this, the learned Advocate for the petitioner submitted that since the Trust has nothing to do with the suit premises, it has filed the Petition as it was made a party respondent in the appeal. Despite all these submissions made on behalf of the Trust, the plaintiffs who are supposedly aggrieved by the order in appeal have not bothered to file any writ petition to challenge the Appellate Court's order. The Petitioner did not raise any of these contentions before the Appellate Court.

3. Petition is, therefore, dismissed.